



SHELL GULF OF MEXICO INC., *ET AL.*

187 IBLA 290

April 6, 2016



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SHELL GULF OF MEXICO INC., *ET AL.*

IBLA 2016-48

April 6, 2016

Motions to intervene in appeal denied; motion to participate as *amicus curiae* denied.

1. Administrative Appeals -- Administrative Procedure:
Generally -- Intervention

A movant seeking to intervene in another's appeal must demonstrate that it would be adversely affected by a Board decision that reverses, vacates, sets aside, or otherwise modifies the agency's decision on appeal. The movant is adversely affected if it has a legally cognizable interest in the subject matter of the appeal, and a Board decision that changes the agency's decision will cause or is substantially likely to cause injury to that interest. Merely speculating that a Board decision could adversely affect the movant's interests sometime in the unspecified future does not suffice to show adverse effect for intervenor status purposes.

2. Administrative Appeals -- Administrative Procedure:
Generally

An *amicus curiae* must present arguments in its brief that bear upon the issues raised by the parties to the appeal. The Board will not accept *amicus curiae* briefs that contain arguments irrelevant to the matters involved in the appeal or that otherwise raise issues that have not been presented by the parties to the appeal.

APPEARANCES: Peter J. Schaumberg, Esq. and James Auslander, Esq., Washington, D.C., for appellants; Erik Grafe, Esq., Anchorage, Alaska, Rachael E. Meny, Esq. and Justina K. Sessions, Esq., San Francisco, California, for potential intervenors/*amici curiae*; and Laura Mayberry, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Safety and Environmental Enforcement.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

Shell Gulf of Mexico, Inc., and Shell Offshore, Inc. (appellants), have appealed from an October 16, 2015, decision issued by the Bureau of Safety and Environmental Enforcement (BSEE), Alaska Region. BSEE denied appellants' request for a 5-year suspension of operations (SOO) for their Federal offshore oil and gas leases located in the Chukchi and Beaufort Seas.

On January 13, 2016, Alaska Wilderness League, Center for Biological Diversity, Friends of the Earth, Greenpeace, Inc., National Audubon Society, Northern Alaska Environmental Center, Pacific Environment, Sierra Club, The Wilderness Society, and Earthjustice timely filed a Motion to Intervene (Motion 1) in appellants' appeal. On January 14, 2016, Oceana, Inc. also filed a Motion to Intervene (Motion 2). The proposed intervenors raise similar arguments in support of their respective motions, and therefore the Board has consolidated them for disposition.

Because the proposed intervenors have not shown the Board's disposition of this appeal would adversely affect their interests in protecting the leased areas from environmental harm, we deny the motions to intervene. Nor do we grant the proposed intervenors *amici curiae* status because they have not sufficiently stated how their briefs would be relevant to the issues involved in this appeal.

Motions to Intervene

[1] In determining whether to grant a timely-filed motion to intervene, the Board considers whether the movant would be adversely affected by a Board decision that reverses, vacates, sets aside, or otherwise modifies the agency's decision on appeal. See 43 C.F.R. § 4.406(b)(1); *Hanley Ranch Partnership v. BLM*, 183 IBLA 184, 194 (2013). The movant is adversely affected if it demonstrates it has a legally cognizable interest in the subject matter of the appeal, and a Board decision that changes the agency's decision will cause or is substantially likely to cause injury to that interest. See 43 C.F.R. §§ 4.406(b)(1), 4.410(d); *Hanley Ranch Partnership*, 183 IBLA at 194-95. The Board may deny a motion to intervene if, for example, the movant cannot show adverse effect, or where granting the motion would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal. 43 C.F.R. § 4.406(c)(2); *Hanley Ranch Partnership*, 183 IBLA at 194-95.

In support of their motions, the proposed intervenors state they are nonprofit conservation organizations whose members would be adversely affected if the Board did not affirm BSEE's denial of appellants' SOO request. Since BSEE's denial of appellants' SOO request may cause the leases at issue to expire, "oil spills, noise, vessel and aircraft traffic, and climate change effects caused by industrial oil operations

related to the exploration and development of the leases” would not occur. Motion 1 at 4; see Motion 2 at 6 (“By perpetuating the risk of an oil spill and other threats of noise, air and water pollution from drilling, ice-breaking, and vessel traffic, [Oceana, Inc.] knows that extending [appellants’] leases would significantly impair [its] ability to enjoy the Arctic . . .”).

According to the proposed intervenors, a Board order requiring BSEE to grant appellants’ SOO request would threaten their interests in “conserving the ecological values of these [leased] areas and protecting species that could be affected by oil and gas activities connected with the leases” because the leases cannot expire while they are suspended. Motion 1 at 3; see Motion 2 at 7 (“[R]eversal of BSEE’s denial of the SOO request increases the likelihood that exploration and development activities will occur.”).

Appellants oppose the motions. See Appellants’ Opposition to Motions to Intervene, filed Jan. 28, 2016. BSEE did not respond to the motions.

After reviewing the motions filed by the proposed intervenors and appellants’ response, we find the proposed intervenors have not demonstrated that a Board order reversing, vacating, setting aside, or otherwise modifying BSEE’s decision on appeal would adversely affect their organizations’ interests. In this case, the dispositive matter to be decided is whether BSEE erred in denying appellants’ SOO request and not whether BSEE authorized any development or production activities that could have harmful impacts on the surrounding environment. Merely speculating that a Board order reversing BSEE’s decision could adversely affect their interests sometime in the unspecified future does not suffice to show adverse effect for intervenor status purposes. See *Board of County Commissioners of Pitkin County*, 186 IBLA 288, 304 (2015) (“The adverse impact [on appellants from a grant of suspensions of onshore oil and gas operations and production] ‘is merely hypothetical,’ and ‘it is premature for this Board to decide the matter.’”) (quoting *Nevada Outdoor Recreation Association*, 158 IBLA 207, 209 (2003)).

Moreover, we find that the proposed intervenors’ participation for the purpose of “inform[ing] the Board’s decision through a fuller understanding of the interests at stake,” would have the effect of raising additional issues not relevant to the disposition of this appeal. Motion 1 at 5. Potential environmental consequences from offshore oil and gas lease operations are not at issue in this appeal. We find that allowing such arguments would place an unnecessary burden on the proceedings, which could unduly delay this appeal’s adjudication. See 43 C.F.R. § 4.406(c)(2). Therefore, the proposed intervenors’ motions to intervene are denied.

Participation as an Amicus Curiae

[2] Oceana, Inc. requested leave to submit a brief as an *amicus curiae* if the Board denied intervention. Motion 2 at 10. The Board may grant *sua sponte* a potential intervenor *amicus curiae* status if we deny its motion to intervene. 43 C.F.R. § 4.406(d)(2). An individual or entity also may file a motion to participate as *amicus curiae* at any time during the proceedings and the Board has the broad discretion to grant or deny the motion. See *id.* § 4.406(d).

An *amicus curiae* is not a party to the case. See 43 C.F.R. § 4.406(e). Instead, an *amicus curiae*'s role is limited to filing responsive briefs that may assist the Board in resolving the issues before it. Because an *amicus curiae* is not a party to the case, it cannot expand the scope of an appeal by raising issues that have not been presented by the parties to the appeal. See *Eldred v. Reno*, 239 F.3d 372, 379 (D.C. Cir. 2001), *aff'd sub nom. Eldred v. Ashcroft*, 537 U.S. 186 (2003). Therefore, a motion to participate as an *amicus curiae* must state how the brief will be relevant to the issues involved in the appeal. See 43 C.F.R. § 4.406(d)(1).

In this appeal, appellants challenge a denial of a request for a SOO for its offshore oil and gas leases located in the Arctic Ocean. The issue in this appeal is, therefore, whether appellants met the regulatory criteria for a SOO, specifically those set forth in 30 C.F.R. §§ 250.171, 250.172, and 250.175. In contrast, the proposed intervenors seek to address a threat of harm from offshore oil and gas exploration and production activities that could hypothetically occur if the agency grants the SOO. See Motion 1 at 3-4; Motion 2 at 7-9. The proposed intervenors' arguments are not relevant to this regulatory standard and would expand the scope of the appeal. We therefore decline to grant the proposed intervenors *amici curiae* status in this case.

Accordingly, the motions to intervene are denied and leave to file *amici curiae* briefs is denied.

/s/

Eileen Jones
Chief Administrative Judge

I concur:

/s/

Amy B. Sosin
Administrative Judge